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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/349,105	07/08/1999	CHRISTINE RONDEAU	05725.0441-0	6226

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EXAMINER

EINSMANN, MARGARET V

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 09/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/349,105

Applicant(s)

RONDEAU, CHRISTINE

Examiner

Margaret Einsmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 12 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-6 and 8-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-6 and 8-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/12/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 8/12/04 has been entered. The Declaration Under 37 C.F.R. 1.132 submitted with the response of 8/12/04 has been considered and has resulted in the new grounds of rejection below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6,8-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rondeau, US 6,001,135 (or L'oreal, FR 2,757,388) in view of Jones, US 6,106,578.

Rondeau is relied upon as disclosing hair dyeing compositions and processes which use the claimed cationic direct dyes, oxidation bases, polymers and oxidants as claimed. The patentee teaches compositions which contain cationic dyes of formulae

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(I)-(III') in combination with oxidation bases. See col 2 line 15-col 21, line 13. The compositions may also contain couplers in the claimed amounts and additional direct dyes as claimed. See col. 21,line 60-col. 22, line 9. The composition may be applied in various processes, and may be packed in kits as claimed, see col. 22, line 53-co1. 23, line 60. In col. 23, lines 24-30, Rondeau teaches that the claimed polymers may be used in the compositions. Rondeau does not exemplify a composition which contains each claimed component in the claimed amounts, particularly the specifically claimed polymers. The patentee also does not specifically teach the various claimed hair dyeing processes and kits.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to formulate a composition for dyeing hair which contains a cationic direct dye, oxidation base, coupler, oxidant and additional dyes as claimed, wherein each component is present in the claimed amounts, wherein the composition may be applied to hair in processes as claimed and may be packaged in multi-part kits, because such compositions, processes and kits fall within the scope of those as taught by Rondeau.

Jones is applied as teaching a hair dyeing composition comprising hair dyes and thickening polymers. His hair dyeing polymers include cetyl hydroxyethylcellulose and starch. See Col 4 lines 39-60. He states that the benefits of the addition of thickening polymers to hair dyeing compositions include the resistance of the hair dyeing compositions to drip or run once applied to the hair and the increase in the ease of application of the hair dyeing composition to the hair. See col 4 lines 5-15.

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It would have been obvious to the skilled artisan to add the polymers as disclosed by Jones, a hydroxyalkyl cellulose or starch, to the hair dyeing composition of Rondeau for the benefits taught by Jones at col 4 lines 5-15 and also because Rondeau teaches their addition to the compositions. It would have been obvious to the skilled artisan to add the other polymers as claimed to the hair dyeing compositions of Rondeau for the benefits taught by Jones, that is to provide improved viscosity to the compositions to inhibit running and to aid in ease of application of said compositions to the hair. While Rondeau does not state that said polymers are thickeners, it is well known that pectin, gum starch etc. are thickeners, and a compound cannot be separated from its properties. Accordingly the teaching in col 23 suggests the addition of thickening polymer to Rondeau's compositions. The Office holds the position that the various claimed processes and kits are obvious variants of Rondeau's processes and kits because the same end results would be expected and obtained, i.e. the application of a cationic dye, oxidation base, polymer, and oxidizing to the hair, absent a showing otherwise.

Claims 1-6,8-21 and 25-55 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 and 17-42 of copending Application No. 10/761,213. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application recite hair dyeing compositions, processes and kits which use a combination of cationic direct dyes and polymers. The cationic direct dyes and polymers of the copending application overlap in scope with those as claimed, e.g. the copending

polymers include cellulose derivatives. The compositions of the copending application may also contain oxidation bases, couplers and oxidants as claimed. Therefore, the copending claims obviate the instantly claimed invention.


This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret Einsmann whose telephone number is 571-272-1314. The examiner can normally be reached on 7:00 AM -4:30 PM M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 22, 2004


Margaret Einsmann
Primary Examiner
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